CF0000057359

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 1131 OF 1989.

APPELLANT :- Laxman son of Bhola Bhartiya aged 35 years, resident of Asandeeh police Station Ramkola District Sarguja (M.P.).

Single Bench (Criminal)

VERSUS

RESPONDENT :- State of M.P. through police Station Ramkola, District Sarguja.

29/11/89
V.K. Shukla
Adv

APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

# आदेश पत्रक

मामला क्रमांक CR. A. 1131 / 1989 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| | **15-02-2006**<br>Smt. Hamida Siddique, learned counsel for the appellant.<br>Shri Ashish Shukla, learned G.A/Addl. Public Prosecutor for State.<br>This Criminal Appeal is pending since the year-1989.<br>The appellant was convicted vide judgment dated 08-11-1989 passed in Sessions Case No.54/88 by Shri S.R.Dohre, Additional Sessions Judge, Baikunthpur, District-Sarguja under Section-324 of IPC and was sentenced to undergo R.I. for 3 years and fine of Rs.250/- in default of payment of fine to undergo additional R.I. for 3 months.<br>This appeal is pending since 1989. Record of Sessions Trial No.54/88 was requisitioned, but till now only that part of the record which contains only file-B has been received. Despite repeated reminders file-'A' has not been received so far.<br>Smt. Hamida Siddiqui, learned counsel for the appellant submits that she does not press M.Cr.P. No.332/2006 for suspension of sentence and grant of bail. Accordingly, M.Cr.P.No.332/2006 is dismissed as not pressed. She further submits that she does not press this appeal on merits and would argue only on the question of sentence. Hence, this appeal may | |

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

# आदेश पत्रक

मामला क्रमांक Cr. A. 1131/1989 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| | | -2- |

be disposed of only on the question of sentence. This prayer is not opposed by the learned Govt. Advocate.

The appeal is heard finally only on the question of sentence.

Brief facts of the case are that there was previous enmity between complainant Kamta Prasad and the appellant-accused. On 5.3.85 at about 5.00 P.M. in village Asandih, Kamta Prasad while strolling in front of his house casually asked Ramkhelawan and Jonsai as to from where they were coming. They told him that they had gone to the house pf Shyam Mohan for delivering bamboos. On this, complainant Kamta Prasad hurled abuses on them saying whey they did not give bamboos to him. On hearing this discussion, the accused-appellant also came there. On being asked by Kamta Prasad to identify himself, the appellant took out a '*Balua*' (a sharp weapon) and assaulted Kamta Prasad on the head, shoulder and spinal cord.

After investigation, prosecution under Section 307 of the I.P.C. was launched. The accused/appellant was charged under Section 307 I.P.C. Since the prosecution did not lead any documentary or other reliable evidence to show that Kamta Prasad had sustained grievous injury and in view of the testimony of Dr. K.K. Sen P.W. 13 that the injuries sustained by

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

# आदेश पत्रक

मामला क्रमांक Cr. A. 1131/1989 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|

Kamta Prasad were simple injuries, the trial Court convicted the appellant under Section 324 I.P.C. and sentenced him as aforesaid.

Learned counsel for the appellant submits that in para-13 and 17 of the impugned judgment, the testimony of Dr. K.K.Sen PW-13 has been referred to, which shows that vide report Ex.P-7 the injuries sustained by Kamta Prasad were simple injuries. The prosecution had not filed any X-ray report to prove that Kamta Prasad had sustained grievous injury. It was also pointed out that in para 17 of the judgment, the learned trial Judge has clearly opined that the subsequent opinion given by Dr. K.K. Sen on 17.5.1985 regarding grievous injury sustained by Kamta Prasad was wholly unreliable since X-ray report was not filed by the prosecution and the incident was dated 17.3.1985. Para 18 of the judgment was also pointed out to show that no evidence was led that Kamta Prasad was admitted in the hospital for a period of 20 days or more. Learned counsel further submitted that the appellant is now aged about 55 years and has already suffered incarceration for about 28 days w.e.f. 08-03-1985 to 05-04-1985 and now is in jail since 05-12-2005 till date. On these grounds, learned counsel for the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(५५)

# आदेश पत्रक

मामला क्रमांक Cr.A.No.113/1989 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| | | -५- |

appellant prays that leniency ~~could~~ may be shown to the appellant while awarding sentence.

On the other hand, learned counsel appearing for the State contends that if the substantive sentence of imprisonment is considered to be reduced then adequate compensation should be awarded to Kamta Prasad for the injuries sustained by Kamta Prasad.

I have considered the rival submissions. I have also perused the judgment of Sessions Trial No. 54/88 dated 08-11-1989. Having considered the fact that Kamta Prasad had sustained simple injuries, the fact that the appellant is aged 55 years and has been in jail for a total period over three months and the pendency of this appeal since 1989, in my considered opinion, the ends of justice would be served, if the sentence awarded by the trial Court be modified and the appellant is sentenced to R.I. for 1 year and to pay a fine of Rs. 10,000/- out of which Rs. 9,500/- shall be paid to Kamta Prasad as compensation.

In the result, the appeal is partly allowed. The conviction of the appellant under Section-324 of IPC is maintained. However, the sentence awarded by the trial Court is set-aside and the appellant is sentenced to undergo R.I. for 1 year and to

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(50)

# आदेश पत्रक

Cr. A. No. 113/1989

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश -5- |
|---|---|---|
| Tumane | pay fine of Rs.10,000/- and in default of payment of fine to undergo additional R.I. for 8 months. Out of ~~that~~ the fine amount, a sum of Rs. 9,500/- shall be paid to Kamta Prasad S/o Loknath, Resident of Village-Aasandih, P.S.Ramkola, District-Sarguja as compensation. | Sd/-<br>Dilip Raosaheb Deshmukh<br>Judge |